

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

FREDERICK O. SILVER.

Case No. 3:21-CV-00420-CLB¹

Plaintiff,

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS* AND
DISMISSING THE ACTION**

STATE OF NEVADA,

[ECF Nos. 1, 1-1]

Defendant.

Before the Court is Plaintiff Frederick O. Silver's ("Silver") application to proceed *in forma pauperis*, (ECF No. 1), and his *pro se* civil rights complaint, (ECF No. 1-1). For the reasons discussed below, the Court denies the application to proceed *in forma pauperis*, (ECF No. 1), and dismisses the proposed complaint.

I. **LEGAL STANDARD**

Prior to ordering service on any defendant, the court is required to screen an *in forma pauperis* complaint to determine whether dismissal is appropriate under certain circumstances. See *Lopez*, 203 F.3d at 1126 (noting the *in forma pauperis* statute at 28 U.S.C. § 1915(e)(2) requires a district court to dismiss an *in forma pauperis* complaint for the enumerated reasons). Such screening is required before a litigation proceeding *in forma pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507 (9th Cir. 2015).

“[T]he court shall dismiss the case at any time if the court determines that – (A) the allegations of poverty is untrue; or (B) the action or appeal – (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

¹ This case was assigned to the undersigned pursuant to General Order 2021-03. (ECF No. 3.) Silver further consented to the undersigned's jurisdiction. (ECF No. 4.)

1 Dismissal of a complaint for failure to state a claim upon which relief may be
 2 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. §
 3 1915(e)(2)(B)(ii) tracks that language. When reviewing the adequacy of a complaint under
 4 this statute, the court applies the same standard as is applied under Rule 12(b)(6). See,
 5 e.g., *Watson v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for
 6 determining whether a plaintiff has failed to state a claim upon which relief can be granted
 7 under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6)
 8 standard for failure to state a claim.”). Review under Rule 12(b)(6) is essentially a ruling
 9 on a question of law. See *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir.
 10 2000) (citation omitted).

11 The court must accept as true the allegations, construe the pleadings in the light
 12 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v.*
 13 *McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in *pro se* complaints
 14 are “held to less stringent standards than formal pleadings drafted by lawyers[.]” *Hughes*
 15 *v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotations marks and citation omitted).

16 A complaint must contain more than a “formulaic recitation of the elements of a
 17 cause of actions,” it must contain factual allegations sufficient to “raise a right to relief
 18 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
 19 “The pleading must contain something more. . . than. . . a statement of facts that merely
 20 creates a suspicion [of] a legally cognizable right of action.” *Id.* (citation and quotation
 21 marks omitted). At a minimum, a plaintiff should include “enough facts to state a claim to
 22 relief that is plausible on its face.” *Id.* at 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678
 23 (2009).

24 A dismissal should not be without leave to amend unless it is clear from the face
 25 of the complaint the action is frivolous and could not be amended to state a federal claim,
 26 or the district court lacks subject matter jurisdiction over the action. See *Cato v. United*
 27 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th
 28 Cir. 1990).

1 **II. DISCUSSION**

2 On December 2, 2020, United States District Judge Gloria M. Navarro deemed
3 Silver a vexatious litigant. *Silver v. Clark County Nevada*, 2:20-CV-00682-GMN-VCF, (D.
4 Nev. Dec. 2, 2020). Judge Navarro's Order stated that future complaints filed by Silver
5 with the Court would be subject to prescreening. Further, the Report and
6 Recommendation, which was accepted and adopted in full by Judge Navarro's Order,
7 stated that Silver would be required to seek leave of Court before filing any additional
8 actions. Taking both the Order and Report and Recommendation together, it appears
9 Silver did not comply with the Order.

10 On September 17, 2021, Silver filed the instant action without first obtaining leave
11 of Court. Further, a prescreening of the complaint shows that the only named
12 defendant—the State of Nevada—is immune from suit, as it is a sovereign state and
13 therefore not a “person” amenable to suit under § 1983. See *Will v. Mich. Dep’t of State*
14 *Police*, 491 U.S. 58, 71 (1989). Therefore, this action is not appropriately filed in this
15 Court and the complaint fails on its face. Because the only defendant named in this action
16 is immune from suit, further amendment would be futile, and this action is dismissed with
17 prejudice. See *Cato*, 70 F.3d at 1106.

18 **III. CONCLUSION**

19 **IT IS THEREFORE ORDERED** that Silver's *in forma pauperis* application (ECF
20 No. 1) is **DENIED**; and

21 **IT IS FURTHER ORDERED** that this case is **DISMISSED WITH PREJUDICE**, and
22 the Clerk shall enter judgment and close the case.

23 **IT IS SO ORDERED.**

24 **DATED:** November 9, 2021.


25 **UNITED STATES MAGISTRATE JUDGE**

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